IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE
R.S.O. 1970, c.318, as amended

IN THE MATTER OF: The complaint, as amended, by Pritam Singh of Toronto, Ontario, alleging discrimination in treatment and therapy by the Workmen's Compensation Board Hospital and Rehabilitation Centre, 115 Torberrie Road, Downsview, Ontario, contrary to paragraph 2(1)(a) and (b) of the Ontario Human Rights Code, R.S.O. 1970, c.318, as amended.

BOARD OF INQUIRY

Professor Frederick H. Zemans

Appearances:

A.C. Milward, Esq. D.A.J. D'Oliveira, Esq.	Counsel for the Ontario Human Rights Commission
W.A. Derry Millar, Esq.	For the Workmen's Compensation Board

DECISION

The Evidence

The complainant in this hearing, Pritam Singh, alleges that he was discriminated against in his treatment and therapy programme at the Workmen's Compensation Board Hospital and Rehabilitation Centre which is located in North York in the Municipality of Metropolitan Toronto, 115 Torberrie Road, Downsview, Ontario, contrary to paragraph 2(1)(a) and (b) of the Ontario Human Rights Code, R.S.O. 1970, c.318, as amended.

The complainant in this matter is a twenty-five year old man, currently living in Toronto. He was born in Delhi, India and lived there for approximately four and a half years before moving to the United Kingdom where he lived for six years. He subsequently moved to Vancouver with his family, with whom he moved to Toronto in 1968. Mr. Singh completed his high school education and attended Conestoga College in Kitchener, Ontario for two years, studying to be an electronics technician. After completing his education Mr. Singh was employed on a LIP grant doing community education within the Sikh community. He was subsequently employed as a factory worker at Tital Proform in Toronto. He worked as a drilling operator for approximately one year until he injured his back in November, 1978. This injury was sustained while Mr. Singh was doing some heavy lifting. He was referred by the company doctor to a specialist. Ultimately, he was treated by an orthopedic surgeon who recommended that he receive ultra sonic therapy at the Toronto General Hospital. Mr. Singh attended, for approximately two months, the Toronto General Hospital for therapy. This bi-weekly treatment required him to wait for varying periods of time in a public waiting room as well as to remove some portion of his clothing. Mr. Singh testified that he encountered no problem or opposition to the wearing of his kirpan during these treatments at the Toronto General Hospital. I will discuss later in this decision the meaning and significance of the kirpan. No evidence was called at the hearing to corroborate Mr. Singh's position with respect to his physiotherapy treatments at the Toronto General Hospital.

It is important to underline from the outset of this judgment the crucial aspect that Mr. Singh's religion plays in his life. He is a

member of the Sikh religion. He was born into a family of Sikhs and at the age of 16 chose to be baptised. Sikhs are baptised when they are mature enough to understand the obligations and responsibilities of their religion and at a time in their life when they are prepared to assume the responsibilities that baptism implies within their religion. Only a small percentage of adherents to the Sikh religion are baptised. Baptised Sikhs commit themselves to fulfilling the "five Ks" which require that they must never cut the hair from their body; that a small wooden comb keep the hairs intact and clean and be carried at all times; that a steel bracelet be worn on the wrist; that a specially designed pair of undershorts be worn; and that the ceremonial dagger - the kirpan - be kept on their person at all times. Baptised Sikhs must refrain from cutting their hair, smoking, drinking or taking drugs, committing adultery, or eating meat cut in the kosher or Moslem way.

The five symbols are of both psychological and practical significance. It is believed that body hairs cannot be removed because they are given to the individual by God. The kirpan is stated to be of a defensive rather than offensive nature and signifies that Sikhs are hopefully free of tyranny. The undershorts are worn to signify the Sikh's commitment to chastity. Mr. Singh testified as to his personal belief that these five symbols must be worn at all times. (Evidence pages 15-16)

Counsel for the Commission entered two booklets (Exhibits 5 and 8) into evidence which describe the significance of the five symbols. Exhibit 8, at page 6, states:

> Guru Gobind Singh gave new symbols to the Khalsa. He asked the disciples to wear long keshas (hairs) like the old sages because essentially the Khalsa was to lead a saintly life. The saintly Khalsa was further asked to wear a comb (khanga) for cleanliness of hairs, a steel bangle (kara) as a symbol for honest and right use of our hands, and underwear (kachh) as a symbol of continence and the sword (kirpan) as an armour of protection. The comb is a general symbol for cleanliness of mind and body, the steel bangle is a general symbol for purity of action, the underwear is a general symbol for purity of character and the sword is a general symbol for the primal power (adi shakti).

Further, at page 10, under the heading "The Instructions of the Guru", it states:

> You should wear kesh, kangha, kirpan, kachh, and kara on your body considering them to be the principal symbols for inculcating bravery.

Dr. John W. Spellman, a professor of Asian studies at the University of Windsor, was called by the Human Rights Commission to testify as an expert witness on the precepts of Sikhism. He has extensive teaching experience dating back to 1961 and has taught in universities in Canada, the United States, and India. Throughout his career Dr. Spellman's work has focused on Sikhism and he has written extensively on Indian religions.

Dr. Spellman estimated that of the approximately 200,000 East Indians in Canada the majority are Sikhs, and that in Ontario about 55% of the East Indian population is Sikh. In India, Sikhs are concentrated primarily in the province of Punjab. Dr. Spellman testified that Sikhism is a major world religion and is some 500 years old. There has been a fairly continuous history of persecution against Sikhism since its conception. The most dramatic moment in Sikh history occurred in 1699 when the first baptism ceremony took place. Five men who were willing to die for their religion were baptised. Out of this baptism grew the Khalsa or "saint soldiers". The Khalsa are identified by the baptism ceremony and the five "Ks". They must follow stringent Sikh discipline since they are the "ideal" for other Sikhs to follow. The five "Ks" were used as a means of identification in the face of persecution and are the principle symbols for inculcating bravery. The kirpan symbolizes the obligation to protect the weak and is a source of self confidence and prestige. Dr. Spellman stressed that a member of the Khalsa who does not wear his kirpan is considered to be a fallen Sikh.

Mr. Singh testified that after completion of his course of treatment at the Toronto General Hospital he was referred for treatment to the Workmen's Compensation Board Rehabilitation Centre in Downsview. On Friday, April 20, 1979, he registered at the Rehabilitation Centre and received his treatment timetable and an orientation lecture. Mr. Singh chose to live at home and to commute on a daily basis to the Rehabilitation Centre.

On Monday, April 23, 1979 Mr. Singh commenced his treatment at the Rehabilitation Centre. The evidence is unclear as to exactly what activities Mr. Singh participated in on that day, but he states that he wore his kirpan and that no objection was made to his keeping the kirpan on his person. On Tuesday, April 24, 1979, Mr. Singh returned to the Rehabilitation Centre and followed his treatment timetable. He was wearing his kirpan in a sheath (gatra) underneath a sweater. Prior to swimming he removed his kirpan and left it in the locker room. After completing the swimming period Mr. Singh was dressing and put on the eight inch kirpan that he had earlier removed. Mr. Carl Heinz Adams, a remedial gymnast at the respondent hospital, testified that he was approached by several patients who had just finished changing in the locker room with Mr. Singh. They complained to Mr. Adams that Mr. Singh was wearing a knife or a weapon. Mr. Adams says he tried to calm them down and told them it was just a symbol. He then notified Mr. Robert Moorhead, the Attendance Counsellor, about the situation.

Shortly thereafter Mr. Singh was called into Mr. Moorhead's office to inform him of the hospital's opposition to his wearing his kirpan on the hospital premises. Mr. Singh informed Mr. Moorhead that he was required to wear his kirpan at all times and Mr. Moorhead suggested that it would be acceptable to the hospital if Mr. Singh wore a smaller version. This was not accepted by Mr. Singh who indicated that it would be impossible for him to wear a symbolic kirpan as it would be "injuring his faith". No specific size of kirpan was specified as acceptable, but Mr. Singh indicated that he understood Mr. Moorhead to be referring to either a one inch symbolic kirpan or an emblem resembling the kirpan on his wooden comb (khanga). Mr. Moorhead informed Mr. Singh about two previous incidents where Sikh patients had arranged to replace their kirpans with a symbol placed in or on the turban. Mr. Moorhead's suggestion, that Mr. Singh wear a "jewelled symbol", was based on Mr. Moorhead's previous experience with Sikh patients. Mr. Adams could not recall whether any other Sikh patients had worn a kirpan while being treated at the respondent hospital, but stated that he was aware of several Sikhs wearing small symbolic kirpans in their turbans. (Evidence pages 178-179) Mrs. Nagra, a baptised Sikh, testified for the complainant that she knew one

of the two Sikhs that Mr. Moorhead had referred to in his conversation with Mr. Singh. She stated that, unlike the complainant, the previous patient was not a Khalsa member or a baptised Sikh. (Evidence pages 230-231)

Dr. Spellman stated that although there was no specific prohibition in Sikh writings stipulating that the wearing of a one inch kirpan was not allowed, it was a long established custom that the kirpan be five to nine inches in length. He testified that since there are no priests in the Sikh religion one cannot get prior dispensation from wearing a kirpan. However, Dr. Spellman testified that a Khalsa member who did not wear his kirpan could get subsequent absolution.

Dr. Spellman estimated that less than twenty percent of the Sikhs in Toronto were baptised. In India, between thirty and forty percent of Sikhs are baptised. Dr. Spellman stated that the central Sikh temple was in Amritsar, India, and that Khalsa members located at Amritsar could be asked to make a ruling on the length of an individual Khalsa member's kirpan. However, this group has rarely, if ever, been asked to make such a ruling.

Although Dr. Spellman admitted that in 1699 the purpose of the kirpan was to protect the faith it was, in his opinion, not simply a weapon that could be replaced by another weapon such as a gun. (Evidence page 166) Further, Dr. Spellman emphasized the symbolic nature of the kirpan and that the kirpan should not be perceived as a weapon. He emphasized that the kirpan was worn by baptised Sikhs at all times and that it was seldom removed from their person.

> A. To emphasize the kirpan as a weapon fundamentally in the sense of weaponry would not be as accurate or correct as to indicate the kirpan as a symbol ....
>
> It is more the symbolic significance of the kirpan which includes as you rightly say, that of protection and defence, but it is also understood to be used as - for uprooting evil, or as a symbol of uprooting evil which really doesn't involve one in physical combat generally speaking. It is understood as a sign of independence, and freedom in the sense that there was a time

in Punjab history, when only - when Sikhs were not allowed to wear the kirpan, and so they did so, and they do so, and it represents that freedom and that independence to do so. Quite beyond any aspect of weaponry that is involved....

Q. You do agree with me, that there is a wide symbolic significance.

A. Yes.

Q. But historically and perhaps today, there is still part of that global package an aspect of weaponry.

A. Very small today. I mean ten percent would be too much to ascribe to the kirpan in terms of weaponry, particularly in the extent to which it is worn in comparison to the extent to which it is ever used.

Q. We have heard evidence today, that in many cases, or in some cases the kirpan is worn underneath sweaters, or underneath coats, it is not worn visibly. Now do I take that that it is really a symbol to the individual.

A. Yes.

Q. It is not a symbol to other members of perhaps society, because in many cases the kirpan is not seen.

A. Yes it is a symbol to the individual particularly, but it is an expected symbol of one extent to all Sikhs as well, but to those of us who are not Sikhs, and who have no awareness of its existence, of course we have no understanding of what it is. In most cases, not in all, but in the majority of cases, we wouldn't see it. (Evidence pages 167-168)

He didn't feel that Sikh custom was so unbending that the kirpan could never be removed. For example, the kirpan might be tied to one's head while bathing, or might be kept under one's pillow while sleeping. It is a fundamental belief of all Khalsa Sikhs that they should never allow their kirpan to be removed by force from their person.

All four baptised Sikh witnesses, including the complainant, testified that it was improper to wear a kirpan which was less than five to nine inches in length at any time, and that anyone who did so was not a true Khalsa Sikh and was "injuring his faith".

There is a slight discrepancy between the evidence of the complainant and Mr. Moorhead, on behalf of the Workmen's Compensation Board. Mr. Singh believed that Mr. Moorhead told him specifically that he could not wear his kirpan and that if he insisted on doing so he would be required to leave it with the hospital security personnel. Mr. Singh stated that he suggested that he could get in touch with a representative of his community and attempt to clarify what size of kirpan he should wear while a patient at the respondent hospital. (Evidence page 29) Mr. Moorhead testified that when he suggested to Mr. Singh that he replace his kirpan with a jewelled symbol Mr. Singh was quite concerned and indicated that he was prohibited from removing his kirpan. Mr. Moorhead states that he encouraged Mr. Singh to discuss the matter with leaders of his community. He also encouraged him to return the following morning to attempt a resolution of the problem. Despite Mr. Moorhead's professed desire to respect Mr. Singh's faith, it is clear that he informed Mr. Singh that he would either have to wear a symbolic kirpan or leave his kirpan with the hospital security personnel prior to entering the premises. (Evidence pages 189-190) Mr. Singh testified, and I accept this as a valid belief on his part, that as of April 23, 1979 the staff at the Workmen's Compensation Board Rehabilitation Centre would not have allowed him to receive treatment as long as he persisted in wearing his eight inch kirpan.

Mr. Singh testified that he contacted certain unidentified members of his community who confirmed his beliefs with respect to the wearing of his kirpan and admonished him for removing his kirpan when he went swimming. Mr. Singh did not return to the Workmen's Compensation Board Rehabilitation Centre, nor did he contact the Hospital to discuss the matter further. Rather, he filed a complaint with the Ontario Human Rights Commission regarding his treatment at the Rehabilitation Centre.

When Mr. Singh did not return for treatment, Mr. Moorhead telephoned the complainant and sent him a form letter (Exhibit 4) which informed

the complainant that as of April 27, 1979 he had been discharged from the respondent hospital for non-attendance without leave. The hospital's brochure "Information for Patients" (Exhibit 6) states:

> Patients who are absent for more than 48 hours without authority will be automatically discharged, and their personal effects placed in storage.

Mr. Moorhead testified that he would not allow Mr. Singh to wear his eight inch kirpan because he considered that it was an offensive weapon. The hospital rules contained in Exhibit 6 state:

> While it is the policy of the centre to carry out the treatment and to foster the rehabilitation of the patient with as little disruption of his lifestyle as possible, certain ground rules are necessary to ensure the smooth functioning of the centre, and to protect the rights of all patients. The following conduct is prohibited at the centre, and failure to comply may lead to a disciplinary discharge and loss of compensation:
>
> ...
>
> Possession of an offensive weapon on the property.

Mr. Moorhead testified that he was concerned about the safety of Mr. Singh and other patients. Mr. Moorhead also said that Mr. Richardson, who was the Hospital Administrator at the time, had advised him that kirpans such as the one carried by Mr. Singh breached the hospital rule against possession of offensive weapons. (Evidence pages 207-209) Mr. Moorhead further stated that he would not consider a small penknife to be an offensive weapon unless it was used in a threatening manner. He testified that there had been three assaults against staff at the hospital, one in 1956 or 1957 and two in the past two years. Mr. Moorhead testified that two of the assaults occurred when patients had punched a hospital employee and none of the assaults involved the use of a kirpan or a knife.

Dr. Raymond Johnson, Director of the respondent hospital, testified that the purpose of the rules and regulations was to ensure that the hospital and rehabilitation centre functioned efficiently and effectively in light of its large number of patients. The total admissions to the hospital in 1979 were 10,663 patients, and in 1978, 9,450 patients. (Evidence 224)

He indicated that the hospital had no specific definition of offensive weapons and had not done any research into the issue of offensive weapons or the use of kirpans. (Evidence 227)

Legal Considerations

The determination of the legal issues in this case depends on the interpretation and the applicability of Section 2.1 of the Ontario Human Rights Code which states:

> No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,
>
> (a) deny to any person or class of persons the accommodation, services or facilities available in any place to which the public is customarily admitted; or
>
> (b) discriminate against any person or class of persons with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted.
>
> Because of the ... creed ... of such person or class of persons or of any other person or class of persons. R.S.O. 1970, c.318

The application of the Code to the facts of this case raises five specific issues. They are as follows:

1. Was the complainant denied accommodation, services or facilities customarily available to the public because of his creed under s.2.1 of the Ontario Human Rights Code?
2. Does the definition of creed protect an individually held religious belief which, although consistent with one's creed, is not an essential requirement of that creed?
3. Was the respondent hospital's rule barring offensive weapons supported by a business necessity?
4. Can the kirpan be reasonably classified as an offensive weapon?
5. Could the respondent have reasonably accommodated Mr. Singh's religious belief?

As to the first issue, the Code requires a number of factors to be considered. The Workmen's Compensation Board Hospital must be a place "to which the public is customarily admitted". Mr. Millar, counsel for the respondent, did not dispute the fact that the Workmen's Compensation Board Hospital was such a public place.

Was Mr. Singh denied the services or facilities of the Workmen's Compensation Board Hospital and Rehabilitation Centre? The evidence shows that both the complainant and Mr. Moorhead understood that Mr. Singh was to consult with leaders of the Sikh community with respect to the length of his kirpan and the possibility of its removal. Mr. Moorhead expected Mr. Singh to return the next day. Although Mr. Singh might have been expected to return to the Centre and to have reiterated his position, the evidence is clear that he would not have been allowed to use the facilities and services of the Rehabilitation Centre if he continued to wear his kirpan or did not replace it with a small symbolic kirpan. In his cross-examination Mr. Moorhead was asked:

> If he (Mr. Singh) had come back would he have been permitted to wear his kirpan at all times while at the hospital?

Answer: Under the present policy, no. (Evidence page 205)

I therefore conclude that on April 24, 1979 the complainant was denied the services and facilities of the Workmen's Compensation Board Hospital and Rehabilitation Centre.

Was Mr. Singh denied services because of his creed? The meaning of the word "creed" was considered by Chairman Cumming in Ishar Singh v. Security and Investigation Services Limited, O.H.R.C., Board of Inquiry (1977).

> What is meant by "creed"? This noun is derived from the Latin "credo" meaning "I believe". The Oxford English Dictionary defines "creed": ...
>
> > An accepted or professed system of religious belief: the faith of a community or an individual, especially as expressed or capable of expression in a definite formula.

> Websters New International Dictionary says that "creed" means: ...
>
> > Any formula or confession of religious faith; a system of religious belief, especially as expressed or expressible in a definite statement; sometimes a summary of principles or set of opinions professed or adhered to in science or politics, or the like; as his hopeful creed. Id. at 13
> > Second Edition, unabridged, 1935, copyright 1934 by G. and C., Merriam Co. publishers, Springfield, Massachusetts, U.S.A.

Sikhism is clearly a creed under this definition and, indeed, counsel for the respondent conceded this. However, Mr. Millar submits that the meaning of "creed" does not include religious practices such as the wearing of a kirpan or, as found in the Ishar Singh case, the wearing of a turban. It is my finding that the wearing of a kirpan is an established tenet of the Sikh religion and falls under the definition of "creed". This finding is strengthened by Websters Third New International Dictionary which defines "kirpan" as the "... sacred dagger of the Sikhs ... the right of every Sikh to wear a kirpan". Dr. Spellman testified that, in his opinion, the wearing of the kirpan is an essential aspect of the Sikh religion. (Evidence pages 144, 148)

In the 1963 United States Supreme Court case of Sherbert v. Verner, Mr. Justice Douglas, in his concurring opinion, cited examples of religious interests which he believed should be protected.

> Religious scruples of a Sikh require him to carry a regular or a symbolic sword. ... The examples could be multiplied, including those of the Seventh Day Adventist whose Sabbath is Saturday and who is advised not to eat some meats. ... These suffice however to show that many people hold alien beliefs to the majority of our society - beliefs which could easily be trod upon under the guise of "police" or "health" regulations reflecting the majority's view. (1963), 374 U.S. 398, at 411

Counsel for the Commission also pointed out that Article 25 of the Constitution of India specifically states that "the wearing and carrying of kirpans should be deemed to be included in the profession of the Sikh religion.

In Ishar Singh v. Security and Investigation Services Limited, a Sikh was denied employment because he refused to remove his turban and shave his beard to comply with the employer's policy. Chairman Cumming stated:

> The belief in the fundamental equality of all persons as expressed in the Ontario Human Rights Code is fundamental to the fabric of our society. ... a society which espouses such a philosophy must also learn to be flexible in its practices to ensure that its professed philosophy becomes more than mere words. Many religions require adherence to codes of dress and grooming. Ontario, as a society encourages every person to practice the faith of his or her choice. To truly respect and value different faiths is also to respect the different codes of dress and grooming dictated by those faiths. We cannot profess to encourage religious freedom yet at the same time refuse employment to persons who are exercising their religious freedom simply because they are exercising that freedom. If we allow Sikhs to worship as they wish because we respect their right to have religious beliefs which differ from those held by the majority of people in our society, and yet place Sikhs in a disadvantageous position by not employing them simply because their beliefs require them to have beards and wear turbans, we are being hypocritical. Supra, at 19.

I have carefully considered the evidence at this hearing and conclude that the wearing of a kirpan is and has been for many centuries a basic tenet of Sikhism. I agree with Chairman Peter Cumming that a society which believes in the fundamental equality of all persons must be prepared to accept various and often unique forms of expressing personal religious beliefs. We justifiably pride ourselves on the civil liberties of our young nation and we must be prepared to put our tolerance to the hard and difficult tests. I have no difficulty in concluding that the religious practice of orthodox Sikhs of wearing a kirpan is protected by the Ontario Human Rights Code.

The second legal question raises a much more difficult issue as to whether the wearing of a specific length kirpan is protected

by the Ontario Human Rights Code. To restate the question - is the complainant's personal religious belief that he must wear a kirpan of between five and nine inches protected by the legislation? This Board of Inquiry has heard considerable evidence on the requirement of wearing a kirpan by Khalsa Sikhs. However, as Dr. Spellman testified, there is nothing in Sikh writings that prohibits a kirpan from being one inch long or for that matter that requires the kirpan to be a specific length. Rather he stated that by long and established custom, a kirpan is usually between five to nine inches in length and if the length of an individual Sikh's kirpan became an issue, the only place where a ruling might be obtained was from the governing body of baptised Sikhs - the Khalsa in Amritsar.

The other Khalsa Sikhs, who testified, agreed with the complainant that the wearing of a one inch or symbolic kirpan was not an acceptable practice for the baptised Sikh. However, they did concede that the proper length of a kirpan is a matter of individual interpretation. I find the case of Rex v. Dhyan Singh, A.I.R. (30) 1952 Allahabad 53, instructive on this point. In that case, a Sikh was arrested for the possession of two three-foot long swords. The defendant claimed that the two swords were kirpans and therefore exempt from the Arms Act of 1878, S.19(f). Justice Bhargava stated:

> I have not been referred to nor have I been able to find out any text or authority that prescribes the size or shape of the kirpans which a Sikh is entitled to wear or carry as a religious emblem. In the Lahore case cited above reference has been made to a Punjabi dictionary compiled by Bhai Maya Singh, who was a member of the Khalsa College Council, wherein a kirpan has been defined as an iron knife kept by Sikhs in their turbans. It is a matter of common knowledge that the Sikhs sometimes wear and carry kirpans, which they are entitled to carry as a religious emblem, in their turbans; but there is nothing to prevent them carrying the kirpan in any other manner. They may do so, and they are often seen wearing and carrying a kirpan attached to a belt tied around their waists. Therefore, a kirpan may not necessarily be worn or carried in a turban and may not, therefore, necessarily be of such a size as can be carried in the turban.
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> ...

> Once it is conceded that a kirpan and a sword are synonymous terms, a sword of any size or shape, miniature or big, may be worn or carried by a Sikh as a religious emblem. (emphasis added) Id., at 55.

Justice Bhargava held that a three-foot sword could be a kirpan and therefore exempt from the Arms Act. What is relevant to this Board of Inquiry is that the Sikh religion itself does not dictate a minimum or maximum size for kirpans. The issue is whether the word creed in section 2.1 of the Ontario Human Rights Code can be interpreted to include a belief which, although consistent with one's creed, and sincerely held, is not an essential requirement of that creed.

The American position on this issue is quite clear. The United States courts will protect the beliefs and practices of an individual, as well as the tenets of an established religion. The American position is derived from the First Amendment and Title VII of the Civil Rights Act which, under s.701(j), defines religion as "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business."

The current direction of American decisions and their interpretation of the Civil Rights Act 1964, as amended, are moving in the direction of a broad protection of both religious beliefs and practices which includes the protection of the unique religious beliefs and practices of individual citizens. In Edwards v. School Board of City of Norton, Va. (1980), 21 FEP 1375, the United States District Court adopted the reasons of the U.S. Court of Appeals, Seventh Circuit in Re Redmond v. GAF Corporation (1978), 17 FEP, cases 208 at 210:

> ... We note that to restrict the Act to those practices which are mandated or prohibited by a tenet of the religion, would involve the court in determining not only what are the tenets of a particular religion, which by itself perhaps would not be beyond the province of the court, but would frequently require the courts to decide whether a particular practice is or is not required by the tenets of the religion. We find such

> a judicial determination to be irreconcilable with the warning issued by the Supreme Court in Fowler v. Rhode Island, 345 U.S. 67, 70, 73 S.Ct. 526, 527, 97 L.Ed. 828 (1953): "[I]t is no business of courts to say ... what is a religious practice or activity ...." Id., at 1377.

It should be noted that the previous cases do not deal with the right to wear an eight inch dagger, and furthermore, they rely on either the United States Constitution or Title VII of the Civil Rights Act. It is also clear that American courts have not protected every interest that a party has claimed should be protected by the Constitution. On this point I find the article by Paul Marcus, The Forum of Conscience: Applying Standards Under the Free Exercise Clause (1973), Duke L.J. 1217 to be helpful. Marcus points out that not all interests have been protected under the free exercise clause as for example, the right of Mormons to have more than one wife:

> It has never been seriously suggested that rights under the free exercise clause are any more absolute than rights under any other section of the constitution. Just as one may not yell "fire" in a crowded theatre when there is no fire, one may not kill an unsuspecting person in order to make a religious sacrifice. As with cases arising under the free speech clause, the question here is one of determining when legitimate claims of the state or society must prevail over constitutional rights conferred on the individual. Id., at 1230.

There is little Canadian case law on this point. In Donald v. Hamilton Board of Education (1945), 3 D.L.R. 424 (Ont. C.A.), the plaintiff's two sons were suspended from school for refusing to sing "God Save the Queen", pledge allegiance and salute the flag. The father and his sons were Jehovah's Witnesses and felt that singing the anthem and saluting the flag were forbidden by their scriptures.

Regulations made under The Department of Education Act, R.S.O. 1937, c.356, specifically allowed students to refrain from reciting the Lord's Prayer or take part in religious exercises for religious reasons. However, there was no special exemption that dealt with saluting the flag. The issue in the Donald case was whether saluting the flag was a religious exercise. Justice Gillanders for the Court stated that he would not consider saluting the flag to be a religious exericse:

> But in considering whether or not such exercises may or should in this case, be considered as having devotional or religious significance, it would be misleading to proceed on any personal views on what such exercises might include or exclude. Id., at 428 and 429
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> ...
>
> For the court to take to itself the right to say that the exercises here in question had no religious or devotional significance might well be for the court to deny that very religious freedom which the statute is intended to provide. Id., at 430.

Although this case does not deal with the issue of whether individual beliefs should be protected, it takes a broad view of the definition of a religious practice. A similar view is expressed by Mr. Justice Kerwin in Saumur v. City of Quebec and Attorney-General for Quebec (1953), 4 D.L.R. 641 (S.C.C.). The court held that a Quebec City by-law which prohibited the distribution of pamphlets did not extend to the practices of Jehovah's Witnesses:

> It appears from the material filed on behalf of the appellant that Jehovah's Witnesses not only do not consider themselves as belonging to a religion but vehemently attack anything that may ordinarily be so termed, but in my view they are entitled to "the free exercise and enjoyment of (their) religious profession and worship". The Witnesses attempt to spread their views by way of the printed and written word as well as orally and state that such attempts are part of their belief. Id., at 663.

Four other Supreme Court justices held that the by-law was in relation to religion. The court appears to have adopted a subjective definition of religion which gives credence to personal religious beliefs and practices.

In Regina v. Harrold (1971), 19 D.L.R. (3d) 471 the British Columbia Court of Appeal appears to have taken a slightly different perspective. In that case the Crown was appealing the defendant's acquittal on a charge of contravening a Vancouver anti-noise by-law. The defendant belonged to the Hare Krishna sect and together with several others "were wont to go forth into the streets of Vancouver in accordance with their religious tenets, chanting their transcendental sounds (or mantra) to the accompaniment of a small drum

and two or three cymbals ...." Id., at 473. The court accepted the defendant's sincerity and belief in his religion. The defendant contended that members of his sect were exempt from the by-law, or in the alternative, that religion is a subject solely within federal authority. Mr. Justice Tysoe, wrote the unanimous decision stating:

> In my opinion the members of all religious communities when in Vancouver, as well as all other persons, must obey the by-law. The right to freedom of religion does not permit anyone, acting under the umbrella of his religious teachings and practices, to violate the law of the land, whether that law be federal, provincial, or municipal . . . .
>
> In effect the respondent's submission amounts to this, namely, that he is exempt from all laws that in any way interfere with the manner in which and the means by which he sees fit to engage in the practice and propagation of his particular religion, no matter how detrimental that may be to the other members of his community, except only laws enacted by the Parliament of Canada. To take one example, that if his religion as interpreted by whoever has been appointed to interpret it permits its followers as a group to make their prayers and pronounce their teachings in the middle of the intersection of Hastings and Granville Streets, one of the busiest traffic spots in Vancouver, and thus block all traffic, he and all his fellow religionists are quite free to do so and only the Parliament of Canada can prohibit them. I am quite unable to accept such a submission. Id., at 479 - 480.

Finally, in Ishar Singh v. Security and Investigation Services Limited, the definition of creed adopted by Chairman Cumming, clearly would include an individual's belief which is consistent with the tenets of his faith. However, in that case Chairman Cumming was dealing with the wearing of a turban which is clearly an established tenet of the Sikh faith. Therefore, the issue of individual belief was not addressed. However, the Interpretation Act, R.S.O. 1970, c.225, states:

> 10. Every act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the legislature deems to

> be for the public good or to prevent or punish the doing of anything that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the act according to its true intent, meaning and spirit.

The "true intent" of the Ontario Human Rights Code is clearly stated in the preamble of that Act. Bearing the preamble in mind, the definition of "creed" should not be narrowly construed. I therefore favour the wide definitions of "religion" adopted by American courts and the Supreme Court of Canada in Saumur and the Ontario Court of Appeal in Donald v. Hamilton Board of Education. In other words, an individual's belief, when sincere, and consistent with the tenets of his faith, are afforded protection under the Ontario Human Rights Code.

However, as stated previously, such rights are not absolute. I do not see the case of Regina v. Harrold as being irreconcilable with a liberal interpretation of "religion" and individual belief. Clearly, there must be limits on what society will allow an individual to do in the practice of his religion. The line must be drawn, as it was in the Harrold case, when an individual's right to practice his religion unduly interferes with the rights and interests of the rest of society. We cannot, as a society, refuse to protect the religious beliefs of a minority because the majority disagrees with their practice, or finds it irritating. On the other hand, there are some practices that even the most tolerant society cannot protect. In a peaceful society such as ours, many people quite reasonably feel their rights are being infringed upon when another person is allowed to carry a large knife on his person in a public hospital. The line must be drawn somewhere, the difficulty is in knowing where to draw it.

I find that the wearing of a kirpan of a reasonable length is legitimate and a proper religious act of an orthodox Sikh. Although the kirpan is a strange and perhaps intimidating instrument to most Canadians, I find that Sikhs should be allowed to wear a kirpan of a reasonable length on their person. I will not attempt to define what a reasonable sized kirpan is but I accept the evidence of the witnesses at the hearing that most Sikhs in Canada wear kirpans between five and nine inches in length. As these

kirpans are generally worn under clothing and in a protective case, I do not believe that I am in a position to find that the religious act of wearing a kirpan is improper in Canadian society of the 1980's or to attempt to set a limitation on whether a kirpan's length should be limited to specific dimensions.

Although I find that Mr. Singh's right to wear his kirpan is protected by the Code, it remains open to the respondent hospital to demonstrate that there are competing rights and policies that outweigh Mr. Singh's rights in the circumstances in this case. Thus the fact that Mr. Singh's religious practices are protected does not end this inquiry. Three issues remain to be discussed - was the rule barring offensive weapons supported by a business necessity? Can the kirpan be reasonably classified as an offensive weapon? Could the respondent have reasonably accommodated Mr. Singh's religious belief?

Considerable argument was heard as to whether the respondent must establish by a preponderance of evidence the business necessity of the Rehabilitation Centre's regulations or whether the onus of proof rests on the Human Rights Commission throughout. I will not discuss in detail the various cases cited. In my opinion, the onus of proof throughout the case remains with the Human Rights Commission, but I agree with the Ishar Singh decision that it is virtually impossible for a complainant to demonstrate that a specific employment (or hospital) regulation was not supported by a business necessity. As Chairman Cumming stated in Ishar Singh, at page 33:

> Moreover, it is always difficult to prove a negative proposition. To place the burden of proof, beyond the requirement of establishing a prima facie case, on the victim would place him in an untenable position. It is the employer who is most able to rebut the presumption, if in the particular case the presumption is fairly rebuttable.

As Professor William Black wrote in From Intent to Effect: New Standards in Human Rights, Canadian Human Rights Reporter (1980) c/1 at c/4:

> The approach adopted in the Singh case has now become the prevailing view in Canada .... The 'business necessity' defence could have presented a substantial obstacle to the complainants even if intent no longer had to be proved. Establishing that a policy did not constitute a business necessity would have required a complainant

> to prove a negative proposition, which is always difficult, and would often have also required the complainant to present evidence on technical matters known to few people outside of the business carried on by the respondent. Fortunately, the cases have generally held that once the basic elements of the case have been proved by the complainant, the onus shifts to the respondent on the issue of business necessity. Also, the cases have refused to rely upon vague or subjective conclusions that the requirement under consideration is necessary.

I find that the respondent has established that the rule against offensive weapons (Exhibit 6) was a business necessity. The desirability and necessity of such a rule appears to me to be self-evident. As stated earlier in the decision, the Rehabilitation Centre has, in the past two years, treated close to 20,000 patients. Certain ground rules must be established for the efficient operation of the hospital and the safety and rights of both staff and patients. Clearly, if Mr. Singh had not been a Sikh, and had been found to be carrying an eight inch knife, no one would dispute the desirability of confiscating the knife he was carrying on his person in a public hospital.

Counsel for the Commission argued that the fact that Mr. Singh wore his kirpan for over a day with no complaints from the staff shows that there was no business necessity for the respondent prohibiting Mr. Singh from wearing his kirpan. However, I can think of no practical and lawful method for the respondents to have enforced their regulations in any other way. To search patients everyday to ensure that no drugs or weapons were being brought into the Rehabilitation Centre would raise serious civil liberty issues and would have been impractical. Although one who wanted to conceal weapons could do so quite easily, this would not excuse the Rehabilitation Centre from enforcing its regulations if weapons <u>are</u> discovered on a person. Furthermore, Mr. Singh testified that prior to his swimming therapy he wore his kirpan under his sweater. Short of a body search, for which there would have been no reasonable cause, how could the kirpan have been discovered? I find that the Rehabilitation Centre acted to enforce its rules as soon as was reasonably possible.

The fourth issue is whether the kirpan can be reasonably classified as an offensive weapon. Section 2 of the Criminal Code, R.S.C. 1970, c. C-34, defines "offensive weapon" as:

> (a) anything that is designed to be used as a weapon, or
>
> (b) anything that a person uses, or intends to use as a weapon, whether or not it is designed to be used as a weapon ....

However, I think it may be a mistake to lay too much emphasis on whether or not the courts would find a kirpan to be an offensive weapon pursuant to the Criminal Code. Criminal law is relevant as a reference point from which to infer reasonableness and is indicative of Canadian community standards as to what constitutes an offensive weapon. Therefore, it is more appropriate to ask, whether, under the circumstances of this case, it was reasonable of the respondent to label Mr. Singh's kirpan as an offensive weapon.

In Regina v. Arrance, [1971] 3 W.W.R. 641, the British Columbia Court of Appeal stated:

> One must, I think, start with the premise that a knife, being an instrument that is universally used for utilitarian, peaceful purposes, is not prima facie designed to be used as a weapon, that is to say, in warfare, fighting or combat, to overcome an enemy in attack or defence .... There is nothing to show that the knife in question here was designed to be used as a weapon .... Id., at 644-645

Similarly, in Regina v. Leschyshyn (1973), 11 C.C.C. (2d) 13, Kelly, J.A., in the Ontario Court of Appeal stated that a machete in a sheath, a three-inch knife, a starter's pistol with cartridges, and a small club would only be offensive weapons if they were proven to be held for a purpose dangerous to the public peace. Such proof may be drawn from a consideration of all the circumstances.

There was absolutely no evidence that Mr. Singh intended to use his kirpan in an offensive manner. Canadian law clearly holds that a knife is not prima facie an offensive weapon. However, counsel for the respondent argued that the kirpan was designed in 1699 as a weapon to be used to defend the faith. Furthermore, Mr. Ishar Singh testified that the kirpan must be eight inches long because it must be a "physical, useable thing". Could it be said that the kirpan was designed to be used as a weapon? Dr. Spellman

testified that to call the kirpan a weapon would be misleading. He stated:

> I indicated that it has an enormous number of symbolic significances, but it was obviously a weapon; it was a symbol that was also a weapon. But you couldn't exchange a kirpan for a gun, simply because a gun could do the job more effectively, if it was a question of killing. (Evidence, page 166)

He went on to state that the weaponry aspect of a kirpan was very minimal today and that its value was mainly symbolic. I am of the opinion that Mr. Singh's kirpan was not designed to be used as a weapon, and there was no intent on Mr. Singh's part to use the kirpan as a weapon.

The question remains, however, whether the respondents were reasonable in including Mr. Singh's kirpan within their definition of an offensive weapon.

To answer the question it should be noted that the respondent's aim was to protect its patients and ensure that the Rehabilitation Centre operated without difficulty. Therefore, considering all the circumstances, some deference must be paid to the respondent's judgment. Neither Mr. Moorhead nor Mr. Richardson are lawyers or police officers. They cannot be expected to know the legal definition of "offensive weapon". In good faith, they felt it necessary to prohibit Mr. Singh from carrying his eight inch kirpan and characterized the kirpan as an offensive weapon.

I do not believe that a kirpan carried for religious reasons could be characterized as an offensive weapon by the Canadian criminal courts. I find that the respondents believed that the complainant's kirpan was an offensive weapon. Whether this was a reasonable belief or determination is in my opinion the same question as I must answer with respect to the fifth issue as to whether the respondent could be expected to reasonably accommodate the complainant's religious practice. As I find that these two issues are jointly determinative of the case, I will reserve my decision of whether the respondent acted reasonably in characterizing the complainant's kirpan as an offensive weapon until after I have discussed the reasonable accommodation issue. In other words, I find that it may have been reasonable for the respondent to classify the kirpan as an offensive weapon absent any reference to the Ontario Human Rights Code. But as already discussed earlier, the Ontario Human Rights Code imposes a community standard against which the

respondent's policies and practices must be evaluated.

The fifth and final issue that I must address is, even if the respondent's prohibition against offensive weapons may have been applied in this case, could the respondent hospital have been expected to reasonably accommodate Mr. Singh's religious practice of carrying a kirpan? Counsel for both parties raised two preliminary issues related to reasonable accommodation:

1. Is the evidence of the policies of other hospitals relevant?
2. What is the onus of proof that must be met by the respondent?

The first question is whether the policies of other hospitals are relevant to the matter of reasonable accommodation. I find that it is clearly relevant when deciding whether a specific policy of a public hospital act was "reasonable" to examine the actions or policies of other hospitals in comparable situations. The respondent's actions cannot be judged in a vacuum. Support for this approach is found in other Ontario Human Rights cases such as Ishar Singh v. Security and Investigation Services Limited, where Chairman Cumming considered evidence of the policies of other security guard companies.

In this case, the evidence relating to the practices and policies in other hospitals was quite incomplete and not particularly helpful. Mr. Ishar Singh testified that he was allowed to keep his eight inch long kirpan when he went to the North York Hospital, however, he stated that he was only at the hospital a few hours. (Evidence, pages 112-114) During that time it is not clear whether other patients could see his kirpan or whether it was worn under his clothes and therefore seen only by hospital staff involved in taking his x-rays. Another witness, Mrs. Gian Kaur Nagra, was allowed to keep her kirpan during her overnight stay at Scarborough General Hospital. (Evidence page 217) Since she was admitted as an emergency patient and had surgery, it is unlikely that she was ambulatory, or that her kirpan was visible to other patients. However, there was no evidence on this point. The evidence of Mr. Charan Singh Aheer was similarly lacking in detail. He stated that he was admitted to both East General and Toronto General Hospitals for kidney operations. (Evidence page 76) He was in Toronto General for a period of fourteen days. (Evidence page 86) However, it is again not clear

whether his kirpan was in view and whether Mr. Aheer was ambulatory. Mr. Prowse was the only staff person from a hospital to testify about hospital policy or practice regarding kirpans. Although Mr. Prowse stated that the Toronto East General Orthopedic Hospital allowed Sikhs an exemption from the hospital's offensive weapon prohibition, the evidence discloses that this exemption is more a matter of staff practice than official hospital policy. (Evidence pages 92-103) Therefore, it is not possible for me to afford much weight to this evidence. The policies of other hospitals regarding kirpans, although relevant and of interest to me, are not determinative of this issue, but I do note that all the evidence heard was to the effect that hospitals in the Toronto area did attempt to accommodate the wearing of kirpans and that there was no evidence of other instances where Sikhs were required to remove their kirpans before being admitted to or receiving treatment in an Ontario hospital.

The question of the onus of proof that a respondent must meet with respect to reasonable accommodation of a complainant's religious practices is a more difficult and crucial issue. Discussion of reasonable accommodation in Canadian human rights decisions has been influenced by the 1972 amendments to the American Civil Rights Act. The amendments expanded the definition of "religion" to include "all respects of religious observance and practice". This definition required an employer to accommodate an individual's religious observance to the point of "undue hardship".

In Ishar Singh v. Security and Investigation Services Limited, Chairman Cumming adopted the approach of the 1972 amendments to the American Civil Rights Act. At page 33 he stated:

> Placing the onus on the employer to prove undue hardship on his business is a very sensible approach. The employer is in the best position to understand and explain why his hiring practices are dependent upon the operation of his business.

The Ishar Singh case was considered by Chairman Ratushny in O'Malley (Vincent) v. Simpson Sears Limited, O.H.R.C. Board of Inquiry (1980). After accepting that employers should be required to accommodate an employee's religious practices, Chairman Ratushny considered the issue of onus. On page 11, he stated:

> Quite frankly, I have reservations about attempting to impose an onus of proof upon an employer to meet a specific standard of undue hardship in the absence of any specific legislative basis. It is one thing to conclude that the total framework of the Code warrants a broad interpretation of what might constitute discrimination under that statute. It is another, in effect, to adopt and read into the Code the specific legislative provision of another jurisdiction.
>
> ...
>
> Meanwhile, I propose to apply the very general standard of whether the employer acted reasonably in attempting to accommodate the employee in all of the circumstances of the case as well as in the context of the general scope and objects of the Code.

I agree with Chairman Ratushny that for the purpose of the Ontario Human Rights Code, the respondent should be required to meet a standard of reasonableness, rather than undue hardship, in its effort to accommodate particular religious practices. As Chairman Ratushny noted, the Ontario Human Rights Code does not specify a standard of undue hardship nor does a broad interpretation of the Code imply that a respondent must meet such a strict test. In addition, the recent case of Trans World Airlines Inc. v. Hardison, (1977) 14 E.P.D. 7620 (U.S.S.C.) would seem to have changed the American standard of proof from an undue hardship test to a standard that approximates the reasonableness test articulated by Chairman Ratushny. Finally, it appears that "undue hardship", as defined by recent American decisions, is tied to the employer's costs or productivity and, in that sense, it may be inappropriate to apply an undue hardship test to non-employment situations. Therefore, since I find no significant difference between the post-Hardison undue influence test and the reasonableness test, I see no rationale for adopting the standard of another jurisdiction which may have limited applicability to a complaint which does not relate to employment.

I must now consider whether the respondent acted reasonably in its efforts to accommodate Mr. Singh's religious practice of carrying an eight inch kirpan. As I stated earlier, I must also determine at this juncture whether the respondent acted reasonably in finding that Mr. Singh's kirpan fell within their rules against offensive weapons. After it was noticed that Mr. Singh was

wearing a kirpan he was called to Mr. Moorhead's office and was told that he would not be allowed to wear an eight inch kirpan while at the Centre for treatment. Basing his suggestion on previous experience, Mr. Moorhead suggested that Mr. Singh wear a smaller symbolic or jewelled kirpan. Mr. Singh stated that he could not remove his kirpan or leave it with Centre security staff for safe-keeping. The respondent's employees encouraged Mr. Singh to confer with members of the Toronto Sikh community as to whether he could wear a symbolic kirpan. Mr. Singh left the Centre with the understanding that he could not receive treatment if he persisted in his religious practice of wearing his kirpan. Unfortunately, he did not return to the Centre but rather chose to contact the Ontario Human Rights Commission. I do not think that the respondent's position is improved by virtue of the fact that Mr. Singh did not return to the Hospital. The respondent had made its position clear and had not attempted to investigate whether it could develop a policy which allowed Mr. Singh to receive treatment while he was wearing his kirpan. At no time did the respondent's management discuss Mr. Singh's religious practices with other patients or for that matter with their own personnel in an effort to accommodate his religious practice while receiving treatment.

The interest of the respondent in enforcing its rule against offensive weapons was stated by the Director, Mr. Johnson, to be to ensure that the Centre functions efficiently and effectively. Furthermore, Mr. Moorhead testified that he was concerned about the safety of both Mr. Singh and the other patients. The evidence disclosed that there have been three assaults at the hospital in its history, and none of these assaults involved a knife.

Mr. Moorhead testified that he had only encountered two other Sikhs who were wearing kirpans at the time of their attendance for treatment at the hospital. Both of these Sikhs agreed to wear a smaller jewelled symbol rather than breach hospital regulations. It is clear therefore that the presence of Sikhs wearing an actual kirpan is not a recurring problem for the respondent hospital. In terms of administrative effectiveness and efficiency, the prospect of Sikh patients wearing a kirpan would have caused so little administrative burden so as to be insignificant.

As for the fear of the respondent hospital for the safety of Mr. Singh and the other patients, it is clear that the complainant had no intent to use his kirpan in a threatening or offensive manner and that he did not do so. His kirpan would not have been visible or noticed except when Mr. Singh

was changing or swimming in the hospital pool. Although the patients who did see Mr. Singh's kirpan were allegedly concerned and complained about his "weapon" to Mr. Adams, the evidence discloses that Mr. Adams explained to them that the kirpan was merely a Sikh religious symbol. There is no evidence that after this explanation patients were still apprehensive, but had they been, I am of the opinion that their fears would have been unreasonable and an insufficient cause to deny Mr. Singh his religious rights. It is of importance to note that no patient of the respondent hospital or for that matter no member of the public testified as to their concern about the wearing of a kirpan in a public hospital. In my opinion, we cannot infringe upon the practices of religious minorities simply because of unreasonable apprehensions of other members of society.

It is unfortunate that the parties could not reach a compromise in their positions, especially since Mr. Singh indicated willingness to wear a five inch kirpan rather than an eight inch kirpan, and Mr. Moorhead stated that he would not have considered a small pen knife to be an offensive weapon. Nevertheless, there is no doubt that Mr. Singh could not have returned to the hospital wearing his eight inch kirpan. It is unlikely that he would have been allowed back had he worn a five inch kirpan since I see no reasonable distinction, from the respondent's point of view, between a five inch and eight inch kirpan in terms of administrative burden or an apprehension of danger.

I have concluded that the respondent hospital made no effort to accommodate the legitimate religious practice of the complainant. There was no attempt by the hospital to attempt to educate their staff or patients and to integrate the complainant into a therapy programme which he was entitled to receive. The hospital in my opinion took a unilateral and seemingly arbitrary position which denied Mr. Singh treatment within their facilities. There was no justification in my opinion for the respondent hospital in finding Mr. Singh's kirpan to be an offensive weapon within the provisions of their rules and regulations.

I therefore find that the respondent did not make a reasonable attempt to accommodate Mr. Singh's religious practices. Mr. Singh and future Khalsa Sikh patients should be given the choice as to whether to wear their kirpans while being treated at the respondent hospital. The accommodation of this practice would cause little, if any administrative burden to the respondent hospital and is unlikely to jeopardize the safety of other patients or

members of the public. The respondent Workmen's Compensation Hospital and Rehabilitation Centre is bound to accommodate its patients' religious practices, whether they be in-patients or out-patients, unless the respondent can demonstrate that any such accommodation would be unreasonable.

In summary, the application of the respondent Workmen's Compensation Board Hospital and Rehabilitation Centre regulations has resulted in discrimination against Mr. Singh, a Sikh, because of his creed. Although the respondent Hospital and Rehabilitation Centre did not intend to discriminate against any religious group in the application of its regulation against offensive weapons, the effect of the enforcement of this regulation was to preclude Khalsa Sikhs from obtaining treatment and therapy at a publicly funded hospital in Ontario.

In my opinion, the respondent Workmen's Compensation Board Hospital and Rehabilitation Centre has contravened section 2.1 of The Ontario Human Rights Code.

Order

Mr. Singh has asked that this Inquiry award him $1,000 in damages and that I order that the Ontario Human Rights Code be posted in the respondent's Hospital and Rehabilitation Centre. He also requested that a letter of apology be forwarded to him by the respondent. Although I have found that the respondent Hospital and Rehabilitation Centre has contravened section 2.1 of the Ontario Human Rights Code, I do not think that this is an appropriate case for damages for three reasons.

It is abundantly clear that the respondent hospital and all of its officials acted without malice or intent to discriminate against Mr. Singh or the Sikh community. Their motivation was to ensure the efficient and effective administration of the Hospital and Rehabilitation Centre.

The evidence discloses that the respondent hospital did attempt to discuss Mr. Singh's religious practices with him although I have found that they did not make what I would consider to be a reasonable effort to accommodate his religious beliefs and practices.

Finally, Mr. Singh did not return to the hospital after his initial meeting with Mr. Moorhead, nor did he contact the hospital to explain his position. Although I have stated that the hospital could also have made

the effort to contact Mr. Singh, the failure of Mr. Singh to return to the Centre precluded the possibility of the respondent hospital making further efforts to accommodate Mr. Singh's religious practices prior to the intervention of the Ontario Human Rights Commission.

There has been a contravention of The Ontario Human Rights Code. I therefore order that the respondent hospital should post copies of the Ontario Human Rights Code in conspicuous places in their Hospital and Rehabilitation Centre in Downsview. I further order that Mr. Singh and any prospective Sikh patients of the Workmen's Compensation Board Hospital and Rehabilitation Centre be allowed to wear kirpans of a reasonable length while receiving treatment at the respondent hospital.

DATED AT Toronto this 5th day of June, 1981.

Frederick H. Zemans